

82 - 926

Office - Supreme Court, U.S.

FILED

OCT 18 1982

No.

ALEXANDER L. STEVENS
CLERK

**IN THE
Supreme Court of the United States
OCTOBER TERM, 1982**

**IN THE INTEREST OF
C. and K.
Children**

Appeal from Iowa Supreme Court

JURISDICTIONAL STATEMENT

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Pursuant to Rules 13(2) and 15 of the Rules of The Supreme Court of The United States, appellant Cheryl Clause St. Marie, files this statement of the basis upon which it is contended that The Supreme Court of The United States has jurisdiction to review by way of appeal the judgement entered by The Iowa Supreme Court in this case.

QUESTIONS PRESENTED BY APPEAL

- I. Does the Due Process Clause mandate a Dismissal of the Petition for Termination of Parental Rights and Restoration of Custody of the children to Their Natural Mother?
- II. Does Iowa Code Section 232.116(5) violate due process both on its face and as applied in that it fails to require a showing of harms?
- III. Does Iowa Code Section 232.116(6) unconstitutionally Reverse the Burden of Proof?
- IV. Would Termination in this case be violative of due process in that the Mother has not received effective Notice?

NECESSARY PARTIES

Necessary parties to this appeal include the Appellant Natural Mother, The State of Iowa, and the children, Christopher and Katherine Clause.

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OPINIONS BELOW

The opinion of The Iowa Supreme Court appears in 322 N.W. 2d. 76 (Iowa 1982) and is included herein as Appendix A. Also included is the opinion of the Trial Court herein as Appendix B.

**GROUNDS OF JURISDICTION OF
SUPREME COURT**

This appeal arises from an action to terminate parental rights. The judgement of the Iowa Supreme Court was entered on July 21, 1982. A timely notice of appeal was filed on July 21, 1982, in the Iowa Supreme Court. See Appendix C the jurisdiction of

this Court is invoked under provisions of Title 28, *United States Code*, Section 1257(2).

STATUTES INVOLVED IN THIS APPEAL

This appeal involves the constitutionality of two (2) State Statutes: *Iowa Code*, Section 232.116(5), and *Iowa Code*, Section 232.116(6). As both Statutes are rather lengthy, they are each set forth in their entirety as appendices in this Jurisdictional Statement. *Iowa Code*, Section 232.116(5) appears at Appendix D, and *Iowa Code*, Section 232.116(6) appears at Appendix E.

STATEMENT OF THE CASE

On September 26, 1980, Christopher and Katherine Clause, the children of Cheryl Clause St. Marie (Appellant herein), were adjudged to be children in Need of Assistance, as defined at Chapter 232, *The Code of Iowa* (1979). At that time, custody of the children was removed from the natural mother, and they were placed in foster care. The basis of the States' Complaints centered around unclean living quarters, proper personal hygiene, and a failure to provide proper supervision and care. On April 22, 1981, a Review hearing was held, and placement of the children in foster care was continued.

On September 3, 1981, the State filed a Petition to terminate Parental Rights, and hearing was had on said Petition beginning on September 29, 1981. On December 21, 1981, the Trial Court entered its ruling on the Petition to Terminate Parental Rights. The Trial Court found that significant advances had been made by the natural mother since the date of the Review Hearing. The Trial Court not only dismissed the States' Petition to Terminate Parental Rights, but also ordered immediate return of the children to the custody of the mother. See Appendix B.

In reversing the Trial Court, the Iowa Supreme Court, in its de novo review of the record, based much of its evidentiary analysis on conditions as they were prior to Cheryl's more recent improvements and concluded that the State had carried its burden of clear and convincing evidence. The Court remanded the case to District Court for an Order consistent with that finding. Cheryl's constitutional challenges to the statutes in question were also turned aside, almost summarily. See Appendix A. Upon motion by Appellant, the Iowa Supreme Court stayed their decision pending outcome of this appeal.

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal comes before the Court as a matter of statutory right in as much as the final decision of the Iowa Supreme Court sustained the validity of various parts of Ch. 232, The Code of Iowa (1981) challenged on Federal Constitutional grounds, Specifically the Fourteenth Amendment to the United States Constitution. Therefore, this appeal to the Supreme Court of the United States lies as a matter of right. *Huffman v. Pursue Ltd.*, 1975, 420 U.S. 592, 95 S. Ct. 1200, 43 L. Ed. 2nd 482, rehearing denied 421 U.S. 971, 95 S. Ct. 1969, 44 L. Ed. 2nd 463.

Furthermore, due process issues are raised herein which touch the sensitive issues of home and family as set forth in *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. and 551 (1972) and more recently in *Stantosky v. Kramer*, ____U.S____, 102 S. Ct. 1338, 71 L. Ed. 2nd.

CONCLUSION

For the reasons stated above, appellant submits that this appeal brings before the Court substantial and important issues of due process which require plena consideration, with briefs on the merits and oral argument, for their resolution. Appellant further states that this appeal is before the Court as a matter of statutory right pursuant to Title 28, *United States Code*, Section 1257(2). Dated Oct. 13, 1982.

Respectfully submitted,

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